

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

MAR 29 2010

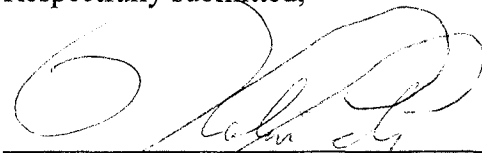
In the Matter of the Petition of NE Colorado Cellular,)
Inc. DBA Viaero Wireless, for Designation as an)
Eligible Telecommunications Carrier Under 47) Docket No. 09-NECZ-747-ETC
U.S.C. 214(E)(2) and for Redefinition of Rural ILEC)
Service Areas.)

NOTICE OF FILING OF STAFF REPORT AND RECOMMENDATION

COMES NOW the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files its report and recommendation on NE Colorado Cellular, Inc. d/b/a Viaero Wireless' application requesting eligible telecommunications carrier (ETC) designation for the purpose of receiving Federal Universal Service Fund (FUSF) and Kansas Universal Service Fund (KUSF) support.

WHEREFORE, Staff requests the Commission consider its report and recommendation and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



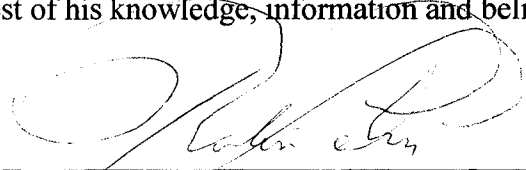
Robert L. Lehr, S. Ct. #9997
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For Commission Staff

VERIFICATION

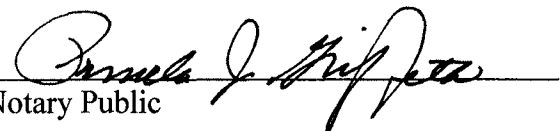
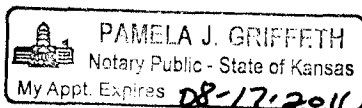
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Robert L. Lehr, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Notice of Filing of Staff Report and Recommendation* and believes that the statements therein are true to the best of his knowledge, information and belief.



Robert L. Lehr, S. Ct., #9997
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 29th day of March, 2010.


Notary Public

My Appointment Expires: August 17, 2011

REPORT AND RECOMMENDATION

TO: Chairman Wright
Commissioner Harkins

FROM: Christine Aarnes

DATE: March 26, 2010

DATE SUBMITTED TO LEGAL: 3/26/10

DATE SUBMITTED TO COMMISSIONERS: 3/29/10

RE: Docket No. 09-NECZ-747-ETC
In the Matter of the Petition of NE Colorado Cellular, Inc. DBA Viaero Wireless,
for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C.
214(E)(2) and for Redefinition of Rural ILEC Service Areas.

BACKGROUND:

On March 20, 2009, NE Colorado Cellular, Inc. d/b/a Viaero Wireless (Viaero) filed an application requesting eligible telecommunications carrier (ETC) designation for the purpose of receiving Federal Universal Service Fund (FUSF) and Kansas Universal Service Fund (KUSF) support. In this initial application, Viaero requests ETC designation in specific exchanges that are served by Rural Telephone Service Company (Rural Telephone Company), Gorham Telephone Company (Gorham), S&T Telephone Company (S&T), Wilson Telephone Company (Wilson), Sunflower Telephone Company (Sunflower), JBN Telephone Company, Inc. (JBN), Wheat State Telephone Company, Inc. (Wheat State), Wamego Telecommunications Company, Inc. (Wamego), Tri-County Telephone Association, Inc. (Tri-County), Bluestem Telephone Company, Inc. (Bluestem), United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink), Council Grove Telephone Company (Council Grove), and Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T).

On August 4, 2009, Viaero filed an amended application requesting ETC designation for FUSF and KUSF support for additional exchanges. The additional requested exchanges are served by AT&T, Rural Telephone Company, Gorham, Golden Belt, United Telephone Association, Inc. (United Telephone), S&T, and Sunflower.

On February 23, 2010, Viaero filed its Errata to Amended Petition (Errata). The Errata corrects Viaero's amended application to reflect that nine of the exchanges for which it is seeking ETC designation are actually served by Twin Valley Telephone, Inc. (Twin Valley) instead of Wheat

State, as it was listed in the amended application, and that Viaero is seeking redefinition of Twin Valley's service area. Viaero still seeks ETC designation for two Wheat State exchanges, as well.

The Federal Communications Commission (FCC) issued an order on May 1, 2008, in which it placed an interim cap on high-cost FUSF support.¹ As of May 1, 2008, total annual competitive ETC support for each state was capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. This cap will remain in place until the FCC adopts comprehensive high-cost universal service reform. Staff notes that approval of this application could cause other CETCs' support to be reduced, as long as the cap remains in place.

ANALYSIS:

Viaero is a foreign for profit corporation organized under the laws of the state of Colorado. Viaero is authorized to conduct business as a foreign for profit corporation in the state of Kansas and its status is "active and in good standing."

Federal ETC Requirements

A common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with section 254 of the Federal Act and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of the Federal Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such service and the charges therefore using media of general distribution.

Federal law, 47 U.S.C. § 214 (e)(2), states that "Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission."

The Commission must evaluate Viaero's ability to meet the criteria set out in 47 U.S.C. § 214(e)(2). The Commission is not *required* to make a public interest determination with regard to the AT&T service area, since it is considered a non-rural telephone company, but Staff will provide a public interest recommendation nonetheless.

¹ In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Order, Released May 1, 2008.

Services or Functionalities

47 C.F.R. § 54.101(a) identifies the services or functionalities that shall be supported by federal universal service support mechanisms. The applicant must provide all of the following services that are designated for federal support: (1) voice-grade access to the public switched network; (2) local usage; (3) dual-tone multi-frequency (“DTMF”); (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers.

In its application, Viaero provided the following explanation of how it meets the aforementioned federal criteria for being designated an ETC.

Voice-grade access to the public switched network – *Viaero will offer its wireless subscribers this service at bandwidths between 300 and 3,000 Hz as required by 47 C.F.R. § 54.101(a)(1), thereby providing voice grade access.*

Local usage – *Viaero’s rate plans provide local usage consistent with Section 54.101(a)(2) of the FCC’s Rules. In the First Report and Order, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide to qualify for ETC designation. Viaero will offer its Lifeline customers a local usage plan within Viaero’s service areas as a part of its monthly service package options. Viaero will comply with any minimum local usage requirements which the FCC and this Commission adopt. Viaero will also meet the requirement by including substantial local usage in all of its rate plans.*

Dual-tone multi-frequency (“DTMF”) – *Viaero will provide DTMF signaling to facilitate the transportation of signaling throughout its network, and will provide that signaling to its wireless customers.*

Single party service or its functional equivalent – *Viaero provides single party service, as required by 47 C.F.R. § 54.101(a)(4).*

Access to emergency services – *Viaero currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement and will continue to do so.*

Access to operator services – *Viaero provides customer access to operator services. Customers can reach operator services. Customers can reach operator services in the traditional manner by dialing ‘0’ in compliance with Section 54.101(a)(6) of the Federal Rules.*

Access to interexchange service – *Viaero has entered into interconnection arrangements with interexchange carriers for its wireline services, and it will provide its wireless customers access to interexchange services. Customers may also “dial around” to reach their interexchange carrier of choice.*

Access to directory assistance – *Subscribers to Viaero's services are able to dial '411' or '555-1212' to reach directory assistance.*

Toll limitation for qualifying low-income consumers – *Viaero has toll limitation capabilities which will enable Viaero to provide toll limitation service for its Lifeline wireless customers.*

The Commission determined in its October 2, 2006 Order in Docket No. 06-GIMT-446-GIT ("October 2nd Order") that it would follow the FCC's guidance and evaluate local usage by considering the comparability of a competitive ETC's offering on a case-by-case basis "by evaluating the total service package, including the local calling scope, included features, and usage that might otherwise be considered long distance." The Commission further stated that it would consider whether an ETC applicant offers unlimited calling to government, social service, health facilities, educational institutions and emergency numbers when considering comparability. ¶¶7-8.

Viaero's response to Staff Request for Information ("RFI") 1.1 states that in addition to traditional wireless plans, it has developed a "Basic Universal Service" offering at the request of regulators in Nebraska and Colorado. For \$15 per month, a customer can make unlimited calling in the local calling area. This offering includes unlimited local calling, no service contract, toll blocking and the ability to place toll calls at \$.10 per minute nationwide. Service is delivered using a wireless home unit roughly the size of a Wireless LAN or DSL modem, which may be purchased for \$144.99 or in monthly installment payments as low as \$4.00. Staff has been assured that the same plan will be offered in Kansas. Further, in response to Staff RFI 4.2, Viaero indicates it will offer a statewide local calling scope to all of its customers in Kansas. Caller ID can be added to the plan for \$1.50 per month, and other features, such as Call Waiting, Call Forwarding, and Call Conferencing may be added for \$2.00 each, per month.

Viaero offers traditional calling plans, as well. Viaero's traditional plans include voicemail, Caller ID, Call Forwarding, Call Waiting, and 3-Way Calling. Viaero's lowest priced traditional individual local plan is \$29.95 per month, and it includes 350 minutes within the local calling area, 5 free "My Group" numbers, and unlimited local night and weekend and local mobile-to-mobile calls. Viaero's lowest priced Individual Nationwide Plans is \$39.95 and includes 800 nationwide minutes and 15 free "My Group" numbers, unlimited nationwide calling on nights and weekends and nationwide mobile-to-mobile calling. Viaero's traditional plans include the added benefit of mobility.

AT&T's monthly rate for a residential access line in the requested exchanges is \$15.70 per month. Vertical features range from \$4.25 per month for Call Forwarding to \$8.00 for Caller ID Name/Number. The local calling scope is the exchange, but local calls are unlimited.

The monthly rate for a residential access line in the Wilson, S&T, JBN, Twin Valley, Wheat State, Wamego, Tri-County, and Council Grove exchanges is \$15.75 per month. The monthly rate for a residential access line in the Rural Telephone Company and Gorham exchanges ranges from \$15.75 to \$17.80 per month. The monthly rate for a residential access line ranges from

\$10.27 to \$10.59 in the Sunflower exchanges and \$13.75 to \$13.86 in the Bluestem exchanges. The monthly rate for a residential access line in the Golden Belt exchanges is \$11.50. The monthly rate for a residential access line in the United Telephone exchanges is \$16.75. The monthly rate for a residential access line in the CenturyLink exchanges is \$17.73.

Staff believes the local usage that will be offered in Viaero's Basic Universal Service calling package is clearly comparable to the incumbent local exchange carriers' (ILECs), since Viaero and the ILECs all offer unlimited local calling. With regard to Viaero's traditional calling plans, Staff believes comparability would depend on the usage pattern and desired features of a particular customer. A customer that completes calls primarily within their exchange may not find the amount of local usage offered by Viaero to be comparable to the offering of the incumbent. However, a customer that completes calls outside of their exchange may find that the local usage is comparable. When one considers the calling scope, usage that might otherwise be considered long distance and mobility, a consumer may find Viaero's traditional calling plans comparable to the incumbent's service offering.

Staff is satisfied that Viaero has demonstrated an ability to provide the services or functionalities supported by the federal universal service support systems in the requested service areas.

Types of Facilities Used to Provide Service

Viaero indicates it will provide universal service utilizing some facilities owned by the company and other facilities leased by other providers. In RFI 1.2, Staff requested clarification of how, specifically, Viaero intends to provide universal service to the requested service areas. In response to RFI 1.2, Viaero indicates it will provide personal communications service (PCS) through a network of telecommunications towers typically employing Global System for Mobile (GSM) technology. Viaero's telecommunications towers typically range from 150 to 330 feet in height, depending on the coverage needs, topography and other physical conditions and limitations of a given area. Viaero has deployed GSM radios manufactured by Nokia Siemens Networks which transmit and receive signals from Viaero subscriber handsets, as well as handsets belonging to other GSM subscribers roaming on Viaero's network. Viaero's roaming agreements provide nationwide coverage, including Canada and Mexico. Voice traffic from each tower is backhauled using secured licensed microwave links between Viaero's towers and its switching centers in Fort Morgan, Colorado and Grand Island, Nebraska. Links between nearly all towers and these switching centers are redundant, allowing for more effective traffic and emergency management and high reliability. In some instances, Viaero purchases access circuits from incumbent local exchange carriers to maintain redundancy in its network or to transport traffic from a specific site to the nearest tandem for routing to the public switched telephone network (PSTN). For the most part, however, Viaero owns and maintains all components of its redundant, self-contained, telecommunications network.

Staff believes Viaero is eligible to be designated an ETC for FUSF and KUSF support when using its own wireless facilities or a combination of its own facilities and resale/roaming agreements. However, Viaero would not be eligible to receive universal service support for customers served via purely resale and/or roaming agreements.

Service Areas

Section 214(e)(5) of the Federal Act defines “service area” as:

The term “service area” means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

“Service areas” or “operating areas” are defined by the state act in K.S.A. 66-1,187(k). K.S.A. 66-1,187(k) provides that,

- (1) In the case of a rural telephone company, operating area or service area means such company’s study area or areas as approved by the federal communications commission;
- (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier’s local exchange service area or areas as approved by the commission.

AT&T is considered a non-rural telephone company for federal and state support purposes and CenturyLink is considered a non-rural telephone company for state support purposes. Therefore, the wire center/exchange is the designated service area for CenturyLink for state support purposes only and for both federal and state support purposes for AT&T.

CenturyLink is considered a rural telephone company for federal support purposes. Rural Telephone Company, Gorham, S&T Telephone, Wilson, Sunflower/Bluestem, JBN Telephone, Wheat State, Wamego, Tri-County, Council Grove, Twin Valley, and Golden Belt are considered rural telephone companies for both state and federal support purposes. Thus, the service area is the study area unless the Commission redefines the service area and the FCC concurs.

Viaero requests ETC designation throughout the entire study areas of Gorham and Council Grove; therefore, there is no need to redefine those study areas. Viaero requests redefinition of the CenturyLink-United, CenturyLink-Eastern, Rural Telephone Company, S&T Telephone, Wilson, Sunflower/Bluestem, JBN, Wheat State, Wamego, Tri-County, United Telephone, Twin Valley, and Golden Belt service areas. Each of the requests will be discussed further below.

AT&T

AT&T is a non-rural carrier for both federal and state support purposes; therefore, Viaero is required to provide service throughout each exchange. Viaero has requested ETC designation for the following AT&T exchanges: Almena, Atwood, Bird City, Blue Rapids, Colby, Cottonwood Falls, Frankfort, Hanover, Hartford, Hays, Hoxie, McDonald, Oakley, Oberlin, Plainville, St. Francis, Seneca, and Stockton.

Staff believes Viaero is licensed to provide service to the requested exchanges and will provide the supported services. Thus, Staff believes Viaero is eligible to be granted ETC designation in the requested AT&T exchanges if the Commission deems it is in the public interest.

Gorham and Council Grove

Viaero requests ETC designation throughout the entire study areas served by Gorham and Council Grove. Staff believes Viaero is licensed to provide service throughout the study areas served by Gorham and Council Grove; therefore, Staff believes Viaero is eligible to be designated an ETC in the Gorham and Council Grove study areas if the Commission determines it is in the public interest.

Redefinition of Rural Local Exchange Carrier Service Areas

Four of the requested rural telephone company service areas have previously been redefined: CenturyLink-Eastern, CenturyLink-United, Rural Telephone Company, and Sunflower/Bluestem. The Commission previously redefined the Sunflower/Bluestem, Rural Telephone Company, and CenturyLink-United service areas to the wire center level in Docket Number 04-RCCT-338-ETC and the FCC concurred with this Commission's decision on May 23, 2005 (by taking no action on the matter). The Commission approved the redefinition of the CenturyLink-Eastern service area to the exchange in Docket Number 04-HBCT-1107-ETC and the FCC concurred with this Commission's decision on March 7, 2005 (by taking no action on the matter.) The Commission will still need to consider whether it is in the public interest to grant Viaero's request in the redefined areas, and also consider redefining the RLEC areas that have not previously been redefined.

If the Commission determines it is in the public interest to redefine the service areas of the rural telephone companies that have not been previously redefined, the requesting carrier must file a petition with the FCC. Pursuant to Section 54.207(c), the petition shall contain:

- (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's ruling or other reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definitions of a service area served by a rural telephone company.

The Federal-State Joint Board (Joint Board) recommended, in its November 8, 1996 *Recommended Decision*, that the FCC retain the current study areas of rural telephone companies as the service areas for such companies. The Joint Board further expressed the following concerns regarding the redefinition of rural telephone company service areas: (1) minimizing the potential for cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other local exchange carriers (LECs); and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.

To address cream skimming concerns, the FCC, in its Virginia Cellular Order², conducted a population density analysis to determine whether it is in the public interest to permit the applicant to be designated as an ETC in the redefined service area based upon whether it will be providing service to a mix of high-cost and low-cost customers. That is, the FCC would not find it to be in the public interest to designate that applicant as an ETC in a redefined service area if it would only be able to serve a low-cost wire center. To address the Joint Board's first concern about cream skimming, Staff conducted a similar cream skimming analysis. Staff's cream skimming analysis will be discussed further in the public interest section.

With regard to considering the rural carrier's special status under the Telecommunications Act of 1996, Staff believes that if the Commission determines it is in the public interest to grant this application, then any concerns regarding a rural carrier's special status should be alleviated. Staff will evaluate the public interest issue thoroughly in the public interest section.

Finally, with regard to the Joint Board's third concern, which is to consider the administrative burden a rural LEC would face by calculating its costs on any basis other than its entire study area. Staff refers to an FCC Order regarding RCC Alabama. The FCC stated in the *RCC Alabama Order*,

Third, we find that redefining the rural telephone company service areas by wire center boundary will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire incumbent rural telephone company's study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on rural telephone companies is not at issue here.³

In addition, the Commission's *Rural USF Order* established three paths from which rural LECs could choose to disaggregate federal universal service support, and allowed each rural LEC to choose its path. Path One allows a rural LEC to elect no disaggregation of support, while Path Three allows disaggregation of support to no more than two zones per wire center.⁴ The Commission opened Docket No. 02-RTCT-366-MIS to receive rural LEC certification plans

² See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Released: January 22, 2004, ("Virginia Cellular Order").

³ See *In the Matter of Federal State Joint Board on Universal Service: RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Released: November 27, 2002, para. 41, ("RCC Alabama Order").

⁴ See *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, released: May 23, 2001, ("Rural USF Order").

pursuant to Paths One and Three. S&T, Wilson, Twin Valley, United, Sunflower/Bluestem, Golden Belt, Wheat State, Wamego, Tri-County, and CenturyLink (formerly Sprint/United Telephone Company) chose Path One, which is no disaggregation of support; however, per the Rural *USF Order*, “a carrier has the option to change to a different path and alter its existing disaggregation plan if a competitor is granted eligible telecommunications carrier status below the study area level.”⁵ Therefore, the aforementioned carriers could elect to disaggregate their support, if they so choose and if the Commission grants such request.

JBN and Rural Telephone Company initially elected Path Three, which disaggregated their universal service support to no more than two zones per wire center. JBN’s support continues to be disaggregated pursuant to its Path Three selection. However, in 2005, Rural Telephone Company petitioned the Commission to change its selection from Path Three to Path One. Rural’s petition indicated it had lost more customers from its rural zones than from the town zones, resulting in a greater reduction in KUSF support than would have occurred under Path One. The Commission approved Rural’s petition to change from Path Three to Path One disaggregation in an order issued on March 9, 2005.

Staff believes the manner in which a rural LEC calculates its costs would not be affected, unless the carrier elects to make such change. Therefore, Staff is not concerned with the Joint Board’s third issue.

Advertising

Eligibility for federal universal service support is addressed by Section 214(e) of the Federal Act. Section 214(e)(1) of the Federal Act states as follows:

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS. – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefore using media of general distribution.

Viaero states it will advertise the availability of its wireless Lifeline services throughout the proposed service area. Viaero has, and will continue to publish the availability of its wireless service offerings throughout its service area. The methods of advertising utilized may include television, radio, newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. Viaero will use media of general distribution to advertise its universal service offerings and charges and will comply with any advertising requirements adopted by the Commission or the FCC.

⁵ Id at ¶ 153.

Staff notes that the Commission required competitive ETCs to develop “meaningful language so that consumers will understand what they can expect from an ETC” and provide it to Staff to review within 90 days from the date of the October 2nd Order.¶12 In addition, the Commission determined that all competitive ETCs shall include contact information for the Commission’s Office of Public Affairs and Consumer Protection in its advertisements to make sure that customers know where to turn with questions and complaints.

In response to Staff RFI 1.3, Viaero submitted a sample of its required advertising verbiage with regard to its universal service offerings on September 24, 2009. In response to Staff RFI 1.3, YourTel indicated that it would use the following language in its ETC advertisements,

Viaero has been designated as an Eligible Telecommunications Carrier (ETC) in many areas of Kansas. As an ETC, Viaero may offer services not available through other wireless carriers, and commits to providing service throughout its designated service area(s) to those requesting service. Please consult your nearest Viaero retailer or call 1-800-4VIAERO for further details or contact the Kansas Corporation Commission Office of Public Affairs and Consumer Protection at 1-800-662-0027 with any questions or complaints.

Staff is satisfied that Viaero will meet the advertising requirement.

Public Interest

The FCC, in its Virginia Cellular Order, made new findings regarding determination of the public interest. While the FCC’s decision is not binding on this Commission, the Commission found in its ALLTEL and RCC Orders that examination of the additional factors enumerated in the FCC’s order is reasonable.

In response to Staff RFI 2.1, Viaero provided the following explanation of how it meets the following guidelines that the FCC suggested for evaluation in the Virginia Cellular Order.

- **Benefits of Increased Competitive Choice** – *Approving Viaero’s application will bring increased competitive choice by allowing the company to expand both its network and service offerings in rural and remote areas of Kansas. Many of the communities Viaero serves, or proposes to serve, lack sufficient wireless coverage. Some areas even lack access to affordable wireline telephone service because line extension is either impossible or cost prohibitive. Viaero expects to be the second or vital third market entrant for telephone service within most of its service territory. Through receipt of universal service payments, Viaero can meaningfully compete with existing incumbent carriers and will bring competitive choice to consumers by pushing the market toward lower rates, a greater variety of services and rate plans, better coverage and improved customer service. Viaero’s service offerings also offer increased flexibility and mobility through the use of wireless GSM technology. Consumers will benefit from Viaero’s competitive offerings in several ways. First, our Basic Universal Service plan will enable low-use and low-income customers to receive a superior product at a price that is a real alternative to wireline service. Second, we offer a higher level of service quality than our*

competition in Colorado and Nebraska, and we intend to deliver that service quality here in Kansas. Finally, we cannot get ongoing support for our new construction unless a customer signs up for our service. Therefore, we have every incentive to take customers from our competition, who will lose support if they lose the customer. This will help all customers because there should be a response from the incumbent service providers who do not wish to lose customers.

- **Competitive ETC's Ability to Provide the Supported Services Throughout the Designated Service Area Within a Reasonable Time Frame** – *Viaero does expect to provide the supported services throughout its requested service area within a reasonable time frame. Despite the current economic conditions, Viaero has experienced growth in revenue and free cash flow that, combined with available financing, are believed to be sufficient to continue the company's aggressive network buildout. Viaero has built 369 telecommunications towers in Colorado, Nebraska, Wyoming and Kansas, and has the site acquisition, engineering and construction workforce to bring as many as one hundred new towers into service each year.*
- **Impact of Multiple Designations on the Universal Service Fund** – *Dependable subscriber estimates and resulting demand on the KUSF are difficult to forecast. Further complicating matters is the fact that per-line reimbursement amounts throughout Vaiero's proposed ETC service area in Kansas vary widely; even an accurate subscriber estimate would need to be accurate by wire center.*

Viaero expects demand on the KUSF to increase after its designation as an ETC. While Vaiero only collects payments for subscribers it is able to acquire within its service area, Viaero expects to acquire customers based on its growth and success as an ETC in Colorado and Nebraska. Based on historic market penetration data, the demographics of the proposed service area, and existing per-line KUSF payments, Viaero estimates that it will draw \$810,228.29 from the KUSF in the first twelve months after obtaining ETC designation, and \$1,231,711.92 in the following twelve month period. Viaero arrived at these figures by applying 2000 census data, sorted by ILEC exchange, to Viaero's existing and planned coverage and estimated market penetration rates. For existing coverage areas, Viaero estimates its subscriber count at 15% of the populations in the first twelve month period, and 20% the second period. For areas of planned or ongoing construction, these estimates are 5% and 10% respectively.

- **Unique Advantages and Disadvantages of the Competitor's Service Offering** – *Viaero's service offerings have several unique advantages:*
 1. *Superior network coverage and reliability*
 2. *Durable network infrastructure designed to withstand extreme weather and other emergencies*
 3. *Best-in-market pricing*
 4. *Superior customer service*
 5. *Mobility*

The primary disadvantage of Viaero's service offerings is their status as 'competitive ETC' offerings rather than those made by an incumbent LEC. This intensifies the need to create a greater network effect to truly compete on a level economic playing field with incumbent LEC offerings, which are reimbursed based on embedded costs. The uncertainty that investments in a competitive ETC service area will be recovered, and over what time horizon they will be recovered, limits investment in competitive network infrastructure, or at least the timing of such investment. This is a significant economic disadvantage.

- **Commitments Made Regarding Quality of Telephone Service Provided By Competing Providers-** *Viaero has committed to provide high-quality telecommunications service in a number of ways. Viaero focuses on providing rural coverage in its markets, not just a highway network designed to generate roaming revenue. Viaero designs its network to maintain 99.9999% reliability by building superior tower networks and signal coverage, deploying higher bandwidth backhaul, and constantly monitoring its network at its operations center in Fort Morgan, Colorado and immediately responding to any network troubles before they lead to service outages. Viaero has built thirty retail outlets in its existing markets, making its products more accessible to rural customers and enhancing the quality of the customer experience. Viaero is not aware of any other carrier that provides six nines of reliability. Viaero answers the phone within three rings on its customer service lines, and we minimize and in some cases eliminate the 'phone tree' experience for our customers. In Colorado and Nebraska, we have remained fully on air through significant ice storms and tornados that have destroyed wireline and some wireless networks.*

In response to Staff's request for further information regarding the impact Viaero's application would have on the universal service funds, Viaero stated that it projects to receive approximately \$523, 803 from the FUSF in year one and \$1,443,272 from the FUSF in year two. As noted previously, the FUSF is currently capped for CETCs; therefore, approval of this application would have no financial impact on the size of the FUSF.

The Commission determined in its October 2nd Order that an ETC applicant shall demonstrate that it has sufficient back-up power to remain functional without external power in emergency situations, is able to reroute traffic around damaged facilities, and can manage emergency traffic spikes. In response to Staff RFI 2.3, Viaero indicates each Viaero tower has a buried propane tank and generator that begins operating automatically in the event commercial power becomes unavailable. Each site has sufficient fuel to operate for two weeks until refueling is necessary. Viaero has contingency plans in place to refuel those sites indefinitely if commercial power remains unavailable once the initial fuel supply is exhausted.

Viaero's towers are connected by a microwave backhaul network that is almost entirely redundant. Traffic can be re-routed around damaged facilities in nearly every scenario. Furthermore, Viaero has engineered its network to manage traffic spikes. The typical peak demand for a tower in Viaero's Kansas network is 3.98 Erlang per sector, or 6.98 Erlang per four sector site. In a typical four sector site configuration, Viaero equips 13 trunks [voice channels] on a per sector basis. Per the Erlang B Tables for a Grade of Service (denoted as P) = 2%, i.e.,

$P=.02$, 13 trunks = 7.402 Erlangs (444.12 MOU) for $P=.02$. At $P=.001$ (1 call in 1000) blockage, 13 trunks = 4.831 Erlangs (289.86 MOU). A cell in the typical 2/2/2/2 configuration can support $[4*13] = 52$ simultaneous calls and 34.20 Erlangs of traffic at a blocking rate of $P=.001$.

The maximum capacity for a single BTS cabinet would be in the 3/3/3/3 configuration which will support 21 trunks on a per sector basis. Therefore, a cell in the 3/3/3/3 configuration can support 84 simultaneous calls and 61.3 Erlangs of traffic at a blocking rate of $P=.001$. In addition, if a sudden surge in traffic were to occur, software commands to the base station may be issued which will use our spectrum and other base station assets more efficiently to double the capacity of the site on a per sector basis. These figures establish that Viaero's network should operate with a blocking rate well below $P=.001$, if not zero.

In its October 2nd Order, the Commission required all competitive ETCs to file two-year service quality improvement plans demonstrating progress, including maps and if targets were not met an explanation of why on an annual basis beginning in August 2007. In response to Staff RFI 3.1, Viaero provided its initial two-year service quality improvement plan.

Following review of Viaero's application and its responses to Staff's RFIs, Staff believes Viaero has demonstrated that it is in the public interest to designate it as an ETC in the requested exchanges served by AT&T, and the entire study areas served by Gorham and Council Grove.

As discussed previously, the Commission has previously redefined the study areas of CenturyLink-United, CenturyLink-Eastern, Rural Telephone, and Sunflower-Bluestem; however, it will still need to review the application with respect to those areas to determine whether it is in the public interest to approve such request. Staff's public interest analysis with regard to each rural carrier's service area is discussed below.

In addition, as discussed previously, Staff conducted a population density analysis to consider the Joint Board's first concern about redefining below the study area level, and also to determine whether it is in the public interest to permit the applicant to be designated an ETC in the redefined service area. The analysis is based upon whether the carrier will be providing service to a mix of high-cost and low-cost customers, whether the LEC could be harmed by such redefinition, and whether it is in the overall public interest to do so. Similar to the FCC's population density analysis in the Virginia Cellular Order, Staff does not find it to be in the public interest to redefine a service area if the applicant is requesting to serve only low-cost wire centers.

As will be discussed further below, Staff does not believe it is in the public interest to redefine the Wilson, Wamego, United Telephone Association, and JBN service areas. Staff's primary concern with regard to the United Telephone Association and Wilson exchanges lies with Viaero's ability to provide service to such areas, while Staff's greatest concern with regard to the Wamego and JBN service areas lies with the fact that Viaero is licensed to provide service to exchanges within the study area with low-population density, thus presumably higher-cost exchanges, but is not requesting ETC designation in those areas. Thus, Staff does not believe it would be in the public interest to redefine below the study area for those LEC service areas since the carrier has the ability (FCC license) to serve high-cost wire centers but elects not to.

CenturyLink

As mentioned previously, CenturyLink is a rural telephone company for federal support purposes and a non-rural telephone company for state support purposes. CenturyLink has three separate study areas in Kansas: Eastern, Southeast and United. Viaero is requesting ETC designation for exchanges within the United and Eastern study areas, but none within the Southeast study area.

Viaero requests ETC designation in the following exchanges in the Eastern study area: Alta Vista, Circleville, Delia, Denison, Emmett, Gridley, Harveyville, Hoyt, Lebo, LeRoy, Mayetta, McLouth, Meriden, Ozawkie, Perry, Rossville, Silver Lake, St. Mary's, and Winchester. The Commission previously redefined the CenturyLink-Eastern service area to the wire center level in Docket Number 04-HBCT-1107-ETC, and the FCC concurred with this Commission's decision on March 7, 2005 (by taking no action on the matter).

Viaero requests ETC designation for the following exchanges in the United study area: Alma, Burlington, Eskridge, Holton, Oskaloosa, Valley Falls, and Waverly. The Commission previously redefined the CenturyLink-United service area to the wire center level in Docket Number 04-RCCT-338-ETC, and the FCC concurred with this Commission's decision on May 23, 2005 (by taking no action on the matter).

Even though CenturyLink's United and Eastern study areas have previously been redefined, the Commission will still need to determine whether it is in the public interest to approve such request. Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested wire centers.

The average population density per square mile for the CenturyLink-United study area wire centers that Viaero proposes to serve is 20.08, compared to 34.52 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire CenturyLink-United study area is 31.79. Staff does not have any cherry picking concerns with regard to the CenturyLink-United service area, as Viaero is not proposing to serve only the highest-density, lowest-cost wire centers, and Staff believes that it is unlikely that allowing Viaero to provide service below the study area level will place CenturyLink at an unfair disadvantage. Additionally, the Commission and the FCC have already redefined the CenturyLink-United service area to the wire center and determined that it is in the public interest for H&B Cable Service, Inc., RCC Minnesota, Inc., USCOC of Nebraska/Kansas, LLC, Wildflower, Nex-Tech Wireless, and WestLink Communications to provide service in portions of the CenturyLink-United service area and all three of the CenturyLink service areas are already at the wire center level for Kansas Universal Service Fund ("KUSF") purposes, and Staff does not believe either have placed CenturyLink at an unfair disadvantage.

The average population density per square mile for the CenturyLink-Eastern study area wire centers that Viaero proposes to serve is 29.57, compared to 26.41 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire CenturyLink-Eastern study area is 27.17. Although the area that Viaero proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not

concerned about cream skimming in this instance. First, Viaero is not proposing to serve only low-cost customers. Rather, Viaero will be providing service to a mix of high-cost and low-cost customers. Second, the Commission has already redefined the CenturyLink-Eastern service area to the wire center and determined that it is in the public interest for H&B Cable, RCC Minnesota, USCOC of Nebraska/Kansas, LLC, Nex-Tech Wireless, WestLink Communications and Wildflower to provide service in portions of the CenturyLink-Eastern service area. Third, all three of the CenturyLink service areas are already at the wire center level for KUSF purposes, and Staff does not believe this has placed CenturyLink at an unfair disadvantage. Thus, Staff believes it is unlikely that allowing Viaero to provide service below the study area level will place CenturyLink at an unfair disadvantage in this instance as well.

Staff believes it is in the public interest to approve Viaero's request to be designated an ETC in the requested CenturyLink wire centers in the United and Eastern study areas.

Rural Telephone Service Company

Viaero is requesting ETC designation in the following Rural Telephone Company exchanges: Downs, Kensington, Lebanon, Osborne, Jennings, Prairie View, Long Island, Woodruff, Agra, Athol, Gaylord, Alton, Natoma, Rexford, Selden, Lenora, Edmond, Logan, Victoria, Gove, Quinter, Grainfield, Hill City, WaKeeney, Moreland, Damer, Palco, Woodston, Zurich, and Collyer. Even though Rural Telephone Company's study area has previously been redefined, the Commission will still need to determine whether it is in the public interest to approve such request. Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested wire centers.

The average population density per square mile for the Rural Telephone Company exchanges that Viaero proposes to serve is 7.07, compared to 12.46 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Rural Telephone Company study area is 8.31. Staff does not have any cream skimming concerns with regard to the Rural Telephone Company service area, as Viaero is not proposing to serve only the highest-density, lowest-cost wire centers, and Staff believes it is unlikely that allowing Viaero to provide service below the study area level will place Rural Telephone Company at an unfair disadvantage. Additionally, the Commission and the FCC have already redefined the Rural Telephone Company service area to the wire center and determined that it is in the public interest for RCC Minnesota, Inc. and WestLink Communications, LLC to provide service in portions of the Rural Telephone Company service area, and Staff does not believe this has placed Rural Telephone Company at an unfair disadvantage. Thus, Staff believes it is in the public interest to approve Viaero's request to be designated an ETC in the requested Rural Telephone Company exchanges.

Sunflower/Bluestem

Sunflower and Bluestem Telephone Company, Inc. ("Bluestem") are owned by the same parent company; therefore, the Sunflower study area also includes the wire centers served by Bluestem. Viaero is requesting ETC designation in the following Sunflower/Bluestem exchanges: Americus, Cedar Point, Saffordville, Sharon Springs, Wallace, and Weskan exchanges. Viaero

initially requested ETC designation in the Leoti exchange but confirmed that this exchange is outside of Viaero's FCC licensed service area and was included in its application in error.

Even though the Sunflower/Bluestem study area has previously been redefined, the Commission will still need to determine whether it is in the public interest to approve such request.

Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested wire centers. The average population density per square mile for the Sunflower/Bluestem wire centers that Viaero proposes to serve is 5.56, compared to 2.65 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Sunflower/Bluestem study area is 4.39. Although the area that Viaero proposes to serve has a slightly higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming. First, Viaero is not proposing to serve only the highest-density, lowest-cost wire centers. Rather, Viaero will provide service to a mix of high-cost and low-cost customers. Furthermore, Staff believes it is unlikely that allowing Viaero to provide service below the study area level will place Sunflower/Bluestem at an unfair disadvantage. The Commission has already redefined the Sunflower/Bluestem service area to the wire center and determined it is in the public interest for RCC Minnesota, United Wireless, Nex-Tech Wireless, and WestLink Communications to provide service in portions of the Sunflower/Bluestem service, and Staff does not believe this has placed Sunflower/Bluestem at an unfair disadvantage.

Golden Belt

Viaero is requesting ETC designation in the following Golden Belt exchanges: Ellis, Utica, Ransom, Brownell, McCracken, Alexander, Bazine, Ness City, Beeler, and Burdett. The Golden Belt service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested Golden Belt wire centers.

The average population density per square mile for the Golden Belt exchanges that Viaero proposes to serve is 5.35, compared to 7.04 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Golden Belt study area is 6.10. Staff does not have any cream skimming concerns with regard to the Golden Belt service area, as Viaero is not proposing to serve only the highest-density, lowest-cost wire centers, and Staff believes that it is unlikely that allowing Viaero to provide service below the study area level will place Golden Belt at an unfair disadvantage.

Staff believes it is in the public interest to grant Viaero's request to be designated an ETC in the requested Golden Belt exchanges. Staff further recommends the Commission approve Viaero's request for redefinition of the Golden Belt service area to the exchange level. Staff notes Viaero

will need to file an application with and receive concurrence from the FCC prior to receiving any FUSF or KUSF support for the requested Golden Belt exchanges.

Wheat State

Viaero is requesting ETC designation in the following Wheat State exchanges: Matfield Green and Olpe. The Wheat State service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested Wheat State wire centers. The average population density per square mile for the Wheat State exchanges that Viaero proposes to serve is 9.08, compared to 23.96 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Wheat State study area is 19.00. Staff does not have any cream skimming concerns with regard to the Wheat State service area, as Viaero is not proposing to serve only the highest-density, lowest-cost wire centers, and Staff believes that it is unlikely that allowing Viaero to provide service below the study area level will place Wheat State at an unfair disadvantage.

Staff believes it is in the public interest to grant Viaero's request to be designated an ETC in the requested Wheat State exchanges. Staff further recommends the Commission approve Viaero's request for redefinition of the Wheat State service area to the exchange level. Staff notes Viaero will need to file an application with and receive concurrence from the FCC prior to receiving any FUSF or KUSF support for the requested Wheat State exchanges.

Tri-County

Viaero is requesting ETC designation in the following Tri-County exchanges: Dwight, White City, Delevan, Wilsey, Lost Springs, and Dunlap. The Tri-County service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested Tri-County wire centers. The average population density per square mile for the Tri-County exchanges that Viaero proposes to serve is 9.61, compared to 14.52 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Tri-County study area is 10.54. Staff does not have any cream skimming concerns with regard to the Tri-County service area, as Viaero is not proposing to serve only the highest-density, lowest-cost wire centers, and Staff believes that it is unlikely that allowing Viaero to provide service below the study area level will place Tri-County at an unfair disadvantage.

Staff believes it is in the public interest to grant Viaero's request to be designated an ETC in the requested Tri-County exchanges. Staff further recommends the Commission approve Viaero's

request for redefinition of the Tri-County service area to the exchange level. Staff notes Viaero will need to file an application with and receive concurrence from the FCC prior to receiving any FUSF or KUSF support for the requested Tri-County exchanges.

Wilson

Viaero is requesting ETC designation in the Lucas and Tipton exchanges. The Wilson service area has not previously been redefined.

According to the information provided regarding Viaero's FCC licensed service area, Staff believes Viaero would be capable of providing service to only approximately one-third to one-half of the geographic areas included in the Lucas and Tipton exchanges, and none of the other exchanges. Staff does not believe it would be in the public interest to redefine Wilson's study area at this time, considering Viaero is not licensed to provide service throughout even one of Wilson's seven exchanges. Staff believes it is likely that allowing Viaero to provide service to a very small portion of Wilson's study area could place Wilson at an unfair disadvantage. Therefore, Staff recommends the Commission deny Viaero's request to redefine the Wilson study area as it is not in the public interest.

S&T

Viaero is requesting ETC designation in the following S&T exchanges: Brewster, Grinnell, Kanorado, Levant, Menlo, Russell Springs, and Winona. The S&T service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested S&T wire centers. The average population density per square mile for the S&T exchanges that Viaero proposes to serve is 4.30, compared to 2.76 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire S&T study area is 3.96. Although the population density per square mile of the area Viaero proposes to serve is slightly higher than the area it is not proposing to serve, Staff does not have cream skimming concerns. Viaero is not proposing to serve only the highest-density, lowest-cost exchanges. Rather, Viaero will be providing service to a mix of high-cost and low-cost customers. Staff believes it is unlikely that allowing Viaero to provide service below the study area level will place S&T at an unfair disadvantage.

Staff believes it is in the public interest to grant Viaero's request to be designated an ETC in the requested S&T exchanges. Staff further recommends the Commission approve Viaero's request for redefinition of the S&T service area to the exchange level. Staff notes Viaero will need to file an application with and receive concurrence from the FCC prior to receiving any FUSF or KUSF support for the requested S&T exchanges.

JBN

Viaero is requesting ETC designation in the Soldier, Corning, Goff and Wetfield exchanges. The JBN service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested JBN wire centers. The average population density per square mile for the JBN exchanges that Viaero proposes to serve is 14.46, compared to 11.25 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire JBN study area is 12.11. Although the population density difference between the areas Viaero has requested to serve and the areas it has not requested to serve are not that vast, Staff does have cream skimming concerns with regard to the JBN service area. Staff believes Viaero is licensed by the FCC to provide service to four additional JBN exchanges: Barnes, Haddam, Morrowville, and Mahaska but chooses not to. Further, Haddam, Morrowville, and Mahaska are the three exchanges with the lowest-population density in JBN's study area. Staff believes it is possible that allowing Viaero to provide service below the study area level could place JBN at an unfair disadvantage. Thus, Staff does not believe it would be in the public interest to redefine JBN's service area or to grant Viaero's request for ETC designation in the JBN exchanges at this time.

Wamego

Viaero is requesting ETC designation in the St. George and Wamego exchanges. The Wamego service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested Wamego wire centers. The average population density per square mile for the Wamego exchanges that Viaero proposes to serve is 35.88, compared to 10.50 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Wamego study area is 27.42. Staff does have cream skimming concerns with regard to the Wamego service area, as Viaero is requesting to serve in the two highest-density, lowest-cost wire centers and not in the lowest-density, highest-cost wire center. Further, it appears that Viaero is licensed to serve in the lowest-density, highest-cost wire center – which is Paxico – but is not requesting to do so. Therefore, Staff believes it is possible that allowing Viaero to provide service below the study area level could place Wamego at an unfair disadvantage. Thus, Staff does not believe it is in the public interest to redefine Wamego's service area or to grant Viaero's request for ETC designation in the Wamego exchanges at this time.

United Telephone Association

Viaero is requesting ETC designation in the Hanston exchange, and requests redefinition of the United Telephone Association service area. The United Telephone Association service area has not previously been redefined.

According to the information provided regarding Viaero's FCC licensed service area, Staff believes Viaero would not be capable of providing service to the Hanston exchange – or any other exchange served by United Telephone Association. Therefore, Staff recommends the Commission deny Viaero's requests to redefine the United Telephone Association service area and for ETC designation in the Hanston exchange.

Twin Valley

Viaero is requesting ETC designation in the following Twin Valley exchanges: Greenleaf, Clifton, Morganville, Green, Wakefield, Longford, Leonardville, Riley, and Olsburg. The Twin Valley service area has not previously been redefined; therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Viaero as an ETC in the requested Twin Valley exchanges. The average population density per square mile for the Twin Valley exchanges that Viaero proposes to serve is 15.42, compared to 14.09 for the wire centers that Viaero is not proposing to serve. The average population density per square mile for the entire Twin Valley study area is 14.69. Although the population density per square mile of the area Viaero proposes to serve is slightly higher than the area it is not proposing to serve, Staff does not have cream skimming concerns. Viaero is not proposing to serve only the highest-density, lowest-cost exchanges. Rather, Viaero will be providing service to a mix of high-cost and low-cost customers. Staff believes it is unlikely that allowing Viaero to provide service below the study area level will place Twin Valley at an unfair disadvantage.

Staff believes it is in the public interest to grant Viaero's request to be designated an ETC in the requested Twin Valley exchanges. Staff further recommends the Commission approve Viaero's request for redefinition of the Twin Valley service area to the exchange level. Staff notes Viaero will need to file an application with and receive concurrence from the FCC prior to receiving any FUSF or KUSF support for the requested Twin Valley exchanges.

Kansas ETC Requirements

Kansas law adopts the federal standards, contained in 214(c)(1), for designating a provider as an ETC for KUSF purposes. K.S.A. 66-2008(c) states:

Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are

deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

Per Section 214(e)(1) of the Federal Act, a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with section 254 of the Federal Act and shall, throughout the service area for which the designation is received - (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of the Federal Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefore using media of general distribution.

At this point, to remain consistent with the Federal fund, the Commission follows the FCC's rules regarding portability of support in determining the amount of KUSF support for which a competitive ETC is eligible. Pursuant to 47 C.F.R. 54.307(a)(3), a competitive ETC that provides the supported services using neither unbundled network elements purchased pursuant to 47 C.F.R. 51.307 nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support that the incumbent LEC would have received for that customer.

RECOMMENDATION:

Staff recommends approval of Viaero's request for designation as an ETC for FUSF and KUSF purposes in the following AT&T exchanges: Almena, Atwood, Bird City, Blue Rapids, Colby, Cottonwood Falls, Frankfort, Hanover, Hartford, Hays, Hoxie, McDonald, Oakley, Oberlin, Plainville, St. Francis, Seneca, and Stockton. Staff further recommends approval of Viaero's request for ETC designation for FUSF and KUSF purposes in the Gorham and Council Grove study areas.

Staff recommends approval of Viaero's request for redefinition of the service areas to the exchange for the following LECs: Golden Belt, Wheat State, Tri-County, Twin Valley, and S&T. Staff further recommends the Commission approve Viaero's request for ETC designation for FUSF and KUSF purposes in the requested exchanges in the Golden Belt, Wheat State, Tri-County, Twin Valley, and S&T service areas. Staff notes that should the Commission approve the request for redefinition of the aforementioned rural service areas to the exchange, Viaero will need to seek and receive concurrence from the FCC prior to receiving any KUSF or FUSF support for such areas.

Staff recommends the Commission deny Viaero's request for redefinition of the Wilson, Wamego, United Telephone Association, and JBN service areas. Thus, Staff further recommends denial of Viaero's request for ETC designation in the exchanges served by Wilson, Wamego, United Telephone Association, and JBN.

Viaero should be advised that support received must be used for its intended purpose; the company will be required to self-certify that it does use the support as intended each year and

that it must comply with other certification requirements developed by the Commission in Docket No. 05-GIMT-112-GIT and in any future proceedings. Additionally, Viaero should be reminded of the decisions made by the Commission in its October 2nd Order, and be aware that any future decisions made by the Commission regarding additional ETC requirements may impact the company and the company may be required to follow these to continue to receive support. Finally, Viaero should be advised that it will not be eligible to receive FUSF or KUSF support for lines served via purely resale or roaming agreements.

cc:	Don Low	Susan Duffy	Tom Stratton
	Bob Lehr	Pat Shurtz	

CERTIFICATE OF SERVICE

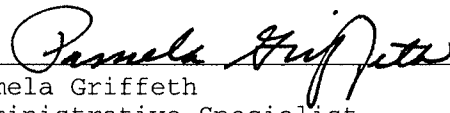
09-NECZ-747-ETC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 29th day of March, 2010, to the following:

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